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SEP 28 2006

Appl. No. : 10/614,644
Filed : July 7, 2003

REMARKS

Applicants have canceled pending Claims 40-66 without prejudice to, or disclaimer of, the subject matter contained therein. Applicants maintain that the cancellation of a claim makes no admission as to its patentability and reserve the right to pursue the subject matter of the cancelled claim in this or another patent application.

Applicants have added new Claims 93-119. Applicants maintain that the new claims contain no new matter and are fully supported by the specification as filed. Support for the claims can be found, for example, on page 5, line 29 - page 6, line 6; Figures 1 - 4; page 9, line 25; pages 12-15; page 17, line 15; page 20; page 21, line 3; pages 26-32; page 33, line 20 - page 34, line 5, and elsewhere throughout the specification.

On September 13, 2006, the undersigned and Examiner Lankford conducted a personal interview to discuss the Office Action mailed March 29, 2006 and a proposed claim. During the interview between the undersigned and Examiner Lankford, the indefiniteness rejections under 35 U.S.C. § 112, second paragraph, and the non-statutory subject matter rejection under 35 U.S.C. § 101 raised in the Office Action mailed March 29, 2006 were discussed. The undersigned and Examiner Lankford agreed that a claim directed to a self-contained adipose stem cell processing unit, comprising: a tissue collection container that is configured to receive adipose tissue that is removed from a patient, wherein said tissue collection chamber is defined by a closed system; a first filter that is disposed within said tissue collection container, which is configured to retain adipose tissue and pass lipid, blood, and saline; a mixing container joined to said tissue collection container, which comprises a port for the addition of an agent, wherein said mixing container is within said closed system; a cell collection container positioned between said tissue collection container and said mixing container, which is configured to receive and concentrate a population of cells that comprise adipose stem cells from said tissue collection container before being passed to said mixing container, wherein said cell collection container is within said closed system; and an outlet configured to allow the aseptic removal of said concentrated population of cells that comprise adipose stem cells, would likely overcome the rejections set forth in the Office Action dated March 29, 2006.

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New Claims 93-119 based on the substance of the interview are now presented for examination on the merits. Applicants respond below to the rejections set forth in the Office Action mailed March 29, 2006. For the reasons set forth below, Applicants respectfully traverse.

Rejection Under 35 U.S.C. § 112, second paragraph - Indefiniteness

The Examiner has rejected Claims 40-66 under 35 U.S.C. § 112, second paragraph, as allegedly failing to particularly point out and distinctly claim the invention. In particular, the Examiner argues that the claims recite a "system," yet it is unclear whether "system" refers to a method or an apparatus. Next, the Examiner argues that the claims relate to "systems for treating a patient," yet maintains that the claims fail to state for what the patient is being treated. The Examiner also states that the claims recite "tissue removal systems" yet fail to recite how adipose tissue is removed from the patient. Further, the Examiner asserts that the claims do not clearly define how the system facilitates separation of stem cells from adipose tissue. Finally, the Examiner argues that the term "stem cells" is indefinite, since there are several types of multipotent cells and the scope of the claims is not clear.

Applicants have canceled Claims 40-66 and maintain that new Claims 93-119 do not raise the same issues that formed the bases of the Examiner's rejection of Claims 40-66. Accordingly, Applicants respectfully request that the indefiniteness rejections under 35 U.S.C. § 112, first paragraph, be withdrawn.

Rejection Under 35 U.S.C. § 101

The Examiner has rejected Claims 40-66 as allegedly being directed to non-statutory subject matter. According to the Examiner a "system" is not a statutory class of invention.

Applicants have canceled Claims 40-66 and maintain that new Claims 93-119 do not raise the same issues that formed the bases of the Examiner's rejection of Claims 40-66. Accordingly, Applicants respectfully request that the non-statutory subject matter rejection under 35 U.S.C. § 101 be withdrawn.

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CONCLUSION


Applicants have endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. If the Examiner finds any remaining impediment to the allowance of these claims, the Examiner is respectfully requested to call the undersigned at 619-687-8643 to resolve such issues.

This action is being filed with a 3-month extension fee. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: September 28, 2006

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